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Umi Khalsom bt Mohamed & Anor (as joint administrators of the estate of Md Rosly bin Abdul Manap) v Haliza bt Hassan & Anor

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D10(D7)–24–516 OF 2008
MOHAMED APANDI J
10 JUNE 2009

C

Company Law — Register of members — Rectification of — Rectification pursuant to order of court — Companies Act 1965 s 162

D

Constitutional Law — Courts — Jurisdiction — Syariah Court — Whether Syariah Court has sole jurisdiction over property rights of Muslims — Federal Constitution art 121(1A) — Administration of Islamic Law (Federal Territories) Act 1993 s 46(2)(b)(iv)

E

Constitutional Law — Jurisdiction — Civil court — Order made by Syariah Court regarding division of 'harta sepencarian' — Whether Syariah Court has sole jurisdiction over property rights of Muslims — Whether order could be challenged in civil court — Federal Constitution art 121(1A) — Administration of Islamic Law (Federal Territories) Act 1993 s 46(2)(b)(iv)

F

Islamic Law — Jurisdiction — Syariah Court — Whether civil court has jurisdiction in matters within jurisdiction of Syariah Court — Federal Constitution art 121(1A) — Administration of Islamic Law (Federal Territories) Act 1993 s 46(2)(b)(iv)

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The plaintiffs were the joint administrators of the estate of the deceased by virtue of letters of administration granted to them by the High Court. Subsequently, the Syariah Court granted an order that 15,000 units of shares in the second defendant which were registered in the name of the first defendant were the 'harta sepencarian' of the deceased and the first defendant.

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The Syariah Court, under its jurisdiction under s 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 1993'), ordered 2/3 (10,000 units) to be apportioned to the plaintiffs and 1/3 (5,000 units) to be apportioned to the first defendant. The plaintiffs then requested the second defendant to rectify its register to register 10,000 units of shares

in the name of the plaintiffs. The second defendant failed to comply with the said request. The plaintiffs thus commenced this action under s 162 of the Companies Act 1965 ('the Act') to compel the second defendant to so rectify its register and to issue the relevant share certificate to the plaintiffs.

Held, allowing the application with costs:

(1) Section 46(2)(b)(iv) of Act 1993 has to be read together with art 121(1A) of the Federal Constitution ('Constitution'), which provides that the civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts (see para 3(f)).

(2) In respect to the property rights of Muslims (including Muslims rights over company shares), only the Syariah Court have the jurisdiction. The (civil) High Court cannot not go behind the Syariah Court order to the effect that it cannot be challenged by virtue of art 121(1A) of the Constitution. Thus, the defendant could not question the validity of the Syariah Court's order (see para 3(g)). *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 referred; *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537 referred.

(3) The plaintiffs had the rights to ask for rectification pursuant to s 162(1)(a) of the Act. The plaintiffs' rights to the shares was lawfully given by a court with competent jurisdiction under s 46(2)(b)(iv) of Act 1993 (see para 4).

[Bahasa Malaysia summary

Plaintif-plaintif merupakan pentadbir bersama estet si mati menurut surat kuasa mentadbir yang diberikan kepada mereka oleh Mahkamah Tinggi. Mahkamah Syariah kemudiannya memberikan perintah bahawa 15,000 unit saham-saham defendan kedua yang didaftarkan atas nama defendan pertama merupakan 'harta sepencarian' si mati dan defendan pertama. Mahkamah Syariah, dengan bidang kuasanya di bawah s 46(2)(b)(iv) Akta Pentadbiran Undang-Undang Islam (Wilayah Persekutuan) 1993 ('Akta 1993'), mengarahkan 2/3 (10,000 unit) untuk dibahagikan kepada plaintif-plaintif dan 1/3 (5,000 unit) untuk dibahagikan kepada defendan pertama. Plaintif-plaintif kemudiannya meminta defendan kedua untuk membetulkan rekodnya untuk mendaftarkan 10,000 unit saham atas nama plaintif-plaintif. Defendan kedua gagal mematuhi permintaan tersebut. Oleh itu plaintif-plaintif memulakan tindakan di bawah s 162 Akta Syarikat 1965 ('Akta') untuk memaksa defendan kedua membetulkan rekodnya dan mengeluarkan sijil saham yang berkenaan kepada plaintif-plaintif.

Diputuskan, membenarkan permohonan dengan kos:

(1) Seksyen 46(2)(b)(iv) Akta 1993 perlu dibaca bersama perkara 121(1A) Perlembagaan Persekutuan ('Perlembagaan'), yang menyatakan bahawa mahkamah sivil tidak mempunyai bidang kuasa dalam perkara-perkara yang terangkum dalam bidang kuasa Mahkamah Syariah (lihat perenggan 3(f)).

(2) Berkenaan hak-hak terhadap harta orang Islam (termasuk hak-hak orang Islam terhadap saham-saham syarikat), hanya Mahkamah Syariah yang mempunyai bidang kuasa sedemikian. Mahkamah Tinggi (sivil) tidak boleh membelakangi perintah Mahkamah Syariah yang bermaksud ia tidak boleh dipersoalkan menurut perkara 121(1A) Perlembagaan. Oleh itu, defendan tidak boleh mempersoalkan kesahan perintah Mahkamah Syariah (lihat perenggan 3(g)). *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 dirujuk; *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537 dirujuk.

(3) Plaintif-plaintif mempunyai hak untuk meminta pembetulan menurut s 162(1)(a) Akta. Hak plaintif-plaintif kepada saham-saham tersebut telah diberikan secara sah oleh mahkamah yang mempunyai bidang kuasa kompeten di bawah s 46(2)(b)(iv) Akta 1993 (lihat perenggan 4).]

Notes

For cases on civil court, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2192–2201.

For cases on jurisdiction, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1927–1944.

For cases on rectification of, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 701.

For cases on Syariah Court, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 561–589.

Cases referred to

Grant & Ors v John Grant & Sons Pty Ltd & Ors (1950) 82 CLR 1, HC (refd)

Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101; [2007] 4 AMR 621, FC (refd)

Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & Anor [1991] 2 MLJ 244, SC (refd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato' Talib [1992] 2 MLJ 793, SC (refd)

Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor [1997] 1 MLJ 537; [1997] 2 AMR 1243, HC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 s 46(2)(b)(iv)
Companies Act 1965 s 162, 162(1)(a)
Federal Constitution art 121(1A)
Rules of the High Court 1980 O 88 r 3(1)

Pawancheek Marican (Wan Merican, Hamzah & Shaik) for the plaintiffs.
Harpal Singh Grewal (AJ Ariffin, Yeo & Harpal) for the defendants.

Mohamed Apandi J:

[1] Enclosure 1 is the plaintiffs's application by originating summons for the following relief, against the defendants, pursuant to s 162 of the Companies Act 1965 and according to O 88 r 3(1) of the Rules of the High Court 1980:

(1) that the second defendant be ordered to rectify its register of members such that 15,000 units of shares in the second defendant that are currently registered in the name of Haliza bt Mohamed (the first defendant) be divided into two blocs, that is 10,000 units of the said shares are to be registered in the names of the plaintiffs jointly and 5,000 units of the said shares are to be registered in the name of the first defendant; and

(2) that the second defendant be ordered to issue a certificate for 10,000 units of the said shares in the names of the plaintiffs jointly, and another certificate for 5,000 units of the said shares be issued in the name of the first defendant, within 14 days from the date of service of the order.

BACKGROUND OF CASE

[2] The background of this application are as follows:

(1) The plaintiffs are the joint administrators of the estate of Md Rosly bin Abdul Manap ('the deceased') by virtue of letters of administration granted to them on 26 October 2005 by the High Court of Kuala Lumpur.

(2) On 3 May 2008, the Syariah Court granted an order, inter alia, that the 15,000 units of shares in the second defendant — which are registered in the name of the first defendant — are the 'harta sepencarian' of the deceased and the first defendant. The Syariah Court ordered 2/3 (10,000 units) is to be apportioned to the plaintiffs and 1/3 (5,000 units) is apportioned to the first defendant.

(3) Following the said order of the Syariah Court, the plaintiffs through their solicitors issued a notice dated 23 October 2008 to the second

A defendant requesting the company to rectify its register of members such that 10,000 units of shares in the second defendant be registered in the name of the plaintiffs and to issue a share certificate for 10,000 units shares to the plaintiffs accordingly.

B (4) The second defendants failed to comply with the said request, thus precipitating this application.

FINDINGS

C **[3]** Upon perusal of the cause papers and the submissions filed herein, I made the following findings:

(a) Section 162(1)(a) of the Companies Act. Section 162(1)(a) provides that:

162 Power of Court to rectify register.

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(1) If —

(a) the name of any person is without sufficient cause entered in or omitted from the register; or

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(b) default is made or unnecessary delay take place in entering in the register the fact of any person having ceased to be a member, the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

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(b) Order 88 r 3(1) of the Rules of the High Court provides that an application under s 162 of the Companies Act for the rectification of the register of members of a company may be made by originating summons or originating motion.

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(c) The plaintiffs are seeking the following relief against the defendants that the second defendant be ordered to rectify its register of members such that 15,000 units of shares in the second defendant be divided into two blocs, that is, 10,000 units of the said shares are to be registered in the names of the plaintiffs jointly and 5,000 units of the said shares are to be registered in the name of the first defendant, and that the second defendant be ordered to issue a certificate for 10,000 units of the said shares in the names of the plaintiffs jointly, and another certificate for 5,000 units of the said shares be issued in the name of the first defendant.

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(d) This application was made pursuant to the decision of the Syariah High Court by its judgment dated 3 March 2008 (exh SFM–3 encl

2) which ordered that the 15,000 units of shares in the second defendant are the 'harta sepencarian' of the deceased and the first defendant of which 2/3 (10,000 units) is to be apportioned to the plaintiff and 1/3 (5,000 units) is apportioned to the first defendant.

(e) The order in exh SFM–3 encl 2 was made by the Syariah Court under its jurisdiction under s 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993. Section 46(2)(b)(iv) provides that:

46 Jurisdiction of Syariah High Court

(2) A Syariah High Court shall —

(b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to —

(iv) the division of, or claims to, harta sepencarian;

(f) Section 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993 has to be read together with art 121(1A) of the Federal Constitution, which provides that the civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

(g) In respect to the property rights of Muslims (including Muslims rights over company shares), only the Syariah Court have the jurisdiction (refer to the case of *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101; [2007] 4 AMR 621. There is a High Court decision on the point that the (civil) High Court cannot go behind the Syariah Court order to the effect that it cannot be challenged by virtue of art 121(1A) of the Federal Constitution, (refer to the case of *Nor Khursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 5 MLJ 101; [1997] 2 AMR 1243. I agree with the rationale of that High Court decision, in which the learned judge applied the reasonings in the Supreme Court cases of *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & Anor* [1991] 2 MLJ 244 and *Mohamed Habibullah bin Mahmood v Faridah bte Dato' Talib* [1992] 2 MLJ 793. Thus, the defendant cannot question the validity of the Syariah Court's order.

(h) Reference is also made to the case of *Grant & Ors v John Grant & Sons Pty Ltd & Ors* (1950) 82 CLR 1 where the court held that:

The person claiming rectification must show that he has some equity which court will protect.

In this case, *the plaintiffs have shown that they have an equity* in these shares via the Syariah Court's order.

A (i) The M & A of a company cannot supersede court orders made under valid law. Further, Article 6 of the second defendant M & A (exh A encl 11) which provides that trusts are not to be recognised unless otherwise provided by the M & A or the law —'except only as by these Articles otherwise provided by the M&A or the law'.

B CONCLUSION

C **[4]** Based on the above findings I am of the opinion that the plaintiffs have the rights to ask for rectification pursuant to s 162(1)(a) of the Companies Act. As explained above, the plaintiffs' rights to the shares was lawfully given by a court with competent jurisdiction under s 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993.

D **[5]** Therefore I conclude that encl 1 should be allowed with costs. Order given, as prayed, accordingly.

Application allowed with costs.

E Reported by Kanesh Sundrum

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